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No. 77-529

In the Supreme Court of the United States

OCTOBER TERM, 1977

WES WISE, MAYOR OF THE CITY OF DALLAS, ET AL., PETITIONERS

v.

ALBERT L. LIPSCOMB, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

WADE H. McCREE, JR.,
Solicitor General,
DREW S. DAYS III,
Assistant Attorney General,
PETER BUSCEMI,
Assistant to the Solicitor General,
BRIAN K. LANDSBERG,
ROBERT J. REINSTEIN,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

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INTEREST OF THE UNITED STATES

This case involves important questions concerning the remedies that may be applied when an exclusively at-large system of electing city council members unconstitutionally dilutes the vote of black citizens. The Court's resolution of the issues presented may affect remedial standards in voting rights suits by the Attorney General authorized by 42 U.S.C. (and Supp. V) 1971 (a) and (c) and 1973j. The case also raises the question whether a legislatively enacted reapportionment plan that incorporates the terms of an earlier court-ordered plan is subject to the preclearance requirements of Section 5 of the Voting Rights Act of

1965, 79 Stat. 439, as amended, 42 U.S.C. (Supp. V) 1973c.

QUESTIONS PRESENTED

1. Whether the court-ordered reapportionment plan for the Dallas City Council improperly provided for the at-large election of three Council members.

2. Whether, in a state covered by Section 4 of the Voting Rights Act of 1965, a legislatively enacted reapportionment plan that embodies the terms of an earlier court-ordered plan is subject to the preclearance requirements of Section 5 of the Act.

STATEMENT

Dallas, Texas, has had a council-manager form of government since the City adopted a home-rule Charter in 1931. Legislative authority is exercised by the City Council; the executive is a City Manager selected by the Council. The 1931 Charter provided for a Council of nine members, including the Mayor.[1] Members were elected, for two-year terms, on an at-large (*i.e.*, city-wide) basis (App. 124, 188). Ballots contained nine numbered "places," one for each Council seat, and all qualified voters in the City could cast one vote for each place. To be elected, a candidate had to receive a majority of the votes cast for his place (App. 124, 188).[2]

The Charter of a Texas home-rule city such as Dallas cannot be amended except by a majority vote

[1] Apart from his duties as a Council member, the Dallas Mayor performs a primarily ceremonial function.

[2] Before 1931, the legislative body in Dallas was a five-member board of commissioners. Under a 1907 state statute, each member of this board was elected at-large (App. 188).

of the registered voters in the city (Texas Const. Art. XI, § 5, see App. 150–151). In 1968, the Charter was amended by referendum to expand the size of the Council from nine to eleven (App. 124; Pet. Br. 3). The City was divided into eight residential districts for Council elections. One numbered place on the ballot was assigned to each district, and candidates for each of those eight places were required to be residents of the corresponding district. No residence requirement applied to the remaining three numbered places, one of which was the Mayor's. Voting for all eleven places was city-wide, and a majority vote was necessary for election to each seat (*ibid.*).

According to 1970 census data, Dallas has 844,401 residents, of whom 210,238 (25 percent) are black and 67,902 (8 percent) are Mexican-American. Approximately 93 percent of all the black residents of Dallas are concentrated in a predominantly black inner-city area, characterized by relatively poor housing, low income and high unemployment (App. 124–125). Mexican-Americans, on the other hand, live throughout the City (App. 138).

Until 1969, no black person had been elected to the Dallas City Council (App. 127). In elections in which black candidates participated, racial bloc voting resulted in their defeat. Black candidates who carried the inner-city area by large majorities were defeated by white opponents who obtained majorities in the more populous white residential areas of the City (App. 125–126). Elections have been non-partisan; slating groups rather than political parties have endorsed Council candidates. The most influential slat-

ing group has been the Citizen's Charter Association ("C.C.A."); 85 percent of the candidates endorsed by C.C.A. have won election (App. 126–127). C.C.A. first endorsed a black candidate in 1969, and he was elected; C.C.A.'s endorsement was apparently given in return for black support of the 1968 Charter amendment that expanded the size of the Council from nine to eleven (App. 127–128).

The present lawsuit was brought in 1971 by black and Mexican-American residents of Dallas who claimed that the at-large system of electing Council members unconstitutionally diluted the vote of racial minorities. The complaint sought a permanent injunction requiring all Council members to be elected from single-member districts (App. 11). The district court dismissed the complaint for failure to state a claim upon which relief could be granted, but the court of appeals reversed. *Lipscomb* v. *Jonsson,* 459 F. 2d 335 (C.A. 5). On remand, several plaintiffs, including all of the Mexican-American plaintiffs, were dismissed from the case for failure to respond to interrogatories (App. 26–27). A plaintiff class, including all black citizens of Dallas, was then certified (App. 28). Two Mexican-Americans subsequently attempted to intervene. The district court denied the application, but specifically granted applicants the right to participate at a remedy hearing in the event the at-large election system was later declared unconstitutional (App. 27–28).

On January 17, 1975, following an evidentiary hearing, the district court issued an oral opinion holding that the system of at-large elections for the Dallas

City Council unconstitutionally diluted the voting strength of blacks (VIII Tr.).[3] Petitioners have not challenged this ruling. In support of its conclusion, the court cited Dallas's history of *de jure* discrimination; the concentration of blacks in an identifiable inner-city area found to be a product of that discrimination; the pattern of racial bloc voting; and the power of the C.C.A. slating group.[4] The district court announced that it would afford "the city council of Dallas an opportunity to devise and present * * * a plan calling for election of members of the Dallas city council which meets constitutional standards" (VIII Tr. 22). A further hearing was set for February 6, 1975.

On January 20, 1975, the City Council passed by a 6–5 vote Resolution No. 75–0207, which provided (App. 188):

> Section 1. That the City Attorney be, and he is hereby directed to notify the Judge of the United States District Court for the Northern District of Texas, Dallas Division, that it is the intention of the majority of this City Coun-

[3] "VIII Tr." refers to Volume VIII of the transcript of the district court hearing. The transcript of the court's oral opinion apparently constitutes Volume VIII of the entire transcript, and we are so identifying it, even though the Roman numeral designation has been omitted from that portion of the transcript dated January 17, 1975.

[4] These findings and conclusions also appear in the district court's written opinion of March 25, 1975 (App. 121–135), which is reported at 399 F. Supp. 782 (N.D. Tex.). The district court stated that there had been a recent and significant improvement in the City's responsiveness to the needs of minority groups (App. 134–135), and noted that there were two blacks and one Mexican-American on the Council, all of whom had been endorsed by C.C.A. (App. 127–128 and n. 5; IX Tr. 80–82).

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> cil to pass an ordinance, when prepared by the City Attorney, which will adopt the present eight residential districts as single member districts, with one individual Councilman to be elected from each of the districts and living in the district, and with three individuals, including the Mayor, to be elected at-large with no residential requirements other than that the candidate live within the City limits of Dallas.

On January 24, 1975, this resolution and an accompanying breakdown of population by district and race were filed with the court as the City's proposed plan (App. 3).[5] Under the plan, eight Council members were to be elected from single-member districts of equal population, drawn according to the existing residential district lines; the remaining three Council members (including the Mayor) were to be elected on an at-large basis. All members were to be elected by majority vote (App. 135–136).

The remedy hearing began on February 5, 1975, and the district court stated that the purpose of the hearing was "to determine the constitutionality of the new proposed plan by the City of Dallas" (App. 29). Evidence presented at the hearing showed that the district populations in the City's proposed plan deviated from the one-person, one-vote principle. The City Attorney's office changed certain district lines and a revised plan was submitted to the court on February 8, 1975, the final day of the hearing. The City Attorney referred to this plan as a "proposed ordinance" (XI Tr. 4–7, 12–13; see App. 136 n. 9).

[5] A copy of this plan and transmittal letter has been lodged with the Clerk.

As revised, the demographic pattern of the eight single-member districts in the City's plan was as follows (App. 143):

District	Total population	Percent black	Percent Mexican-American
1	105,559	2.08	7.63
2	105,529	25.90	20.00
3	105,759	5.96	7.00
4	105,676	3.63	3.20
5	105,433	.26	10.60
6	105,604	73.60	7.20
7	105,353	.40	5.00
8	105,448	87.30	3.44

Blacks were to have clear majorities in two districts (Nos. 6 and 8).[6] Mexican-Americans, who comprise 8 percent of the Dallas population and are dispersed throughout the City, were to be in a distinct minority for all eleven Council seats, with a maximum representation of 20 percent in District 2.

Plaintiffs, representing the class of black citizens, objected to the City's plan because it provided for three at-large places. They proposed instead eleven single-member districts of equal population or, in the alternative, ten single-member districts of equal population and one at-large election for Mayor. The districts drawn in the plaintiffs' plans are compact and contiguous, and their geographical configuration is similar to that of the districts in the City's plan (X

[6] The Council considered and rejected an alternative eight/three plan that gave blacks a majority in three of the eight single-member districts (App. 144 n. 20).

Tr. 218).[7] Under each of the plaintiffs' plans, blacks would constitute a majority in three districts; in a fourth district, neither whites, blacks nor Mexican-Americans would form a majority.[8]

[7] Plaintiffs' ten-district plan (Pl. Exh. 108) would produce the following demographic pattern:

District	Total population	Percent black	Percent Mexican-American
1	84, 291	0. 19	6. 49
2	84, 299	39. 10	22. 34
3	84, 967	. 44	7. 06
4	84, 059	4. 41	2. 47
5	84, 072	. 25	4. 27
6	84, 036	56. 68	4. 52
7	84, 878	. 27	3. 98
8	84, 406	61. 82	7. 10
9	84, 092	62. 87	5. 18
10	84, 301	23. 56	17. 06

Plaintiffs' eleven-district plan (Pl. Exh. 109) would produce the following demographic pattern:

District	Total population	Percent black	Percent Mexican-American
1	77, 188	0. 20	7. 73
2	77, 172	35. 21	28. 11
3	76, 466	7. 95	6. 86
4	76, 359	5. 02	2. 56
5	76, 581	. 12	4. 51
6	76, 370	4. 58	7. 53
7	76, 820	. 30	2. 21
8	76, 528	73. 71	3. 86
9	76, 941	60. 56	4. 12
10	76, 574	62. 42	5. 93
11	77, 402	23. 73	14. 83

[8] This latter district is No. 2 in each of the plaintiffs' plans. In the ten-district plan, this district would be 39% white, 39% black and 22% Mexican-American. In the eleven-district plan, it would be 37% white, 35% black and 28% Mexican-American. See note 7, *supra*.

Several Mexican-Americans were allowed to intervene in the remedy hearing, although not as class representatives (App. 135). They opposed the City's plan but offered no plan of their own (App. 137 n. 10). They suggested, however, that the size of the Council should be increased to at least twenty, with each member elected from a single-member district. This approach would allow the drawing of a district in which Mexican-Americans constitute a majority (*ibid.;* App. 171).

Witnesses for the City supported the retention of three at-large seats on two grounds. First, some City officials testified that it was desirable to have some members of the Council represent a city-wide view on such matters as zoning, the budget and city planning.[9] Second, City officials and other witnesses testified that at-large voting was beneficial to Mexican-Americans because of the power of C.C.A., the major slating group. In order to broaden its base, C.C.A. decided in 1971 to endorse a Mexican-American for one of the three nonresidential places on the ballot. After interviewing several Mexican-Americans, C.C.A. selected Pedro Aguirre, who was endorsed and elected.[10] According to Mr. Aguirre and every other witness who testified on this point, it is impossible

[9] The City Manager of Dallas and two members of the Council stated that there was a strong need for some city-wide representation in Council deliberations on such matters (IX Tr. 75–78, 141–143, 198–200). The Mayor, however, did not think that three at-large seats were necessary (IX Tr. 120–122), and the Mayor pro tem was noncommittal (IX Tr. 10–13).

[10] IX Tr. 80–82 (testimony of Mr. Aguirre).

for a Mexican-American to be elected at-large without the endorsement of C.C.A.[11] If the City's plan were implemented, C.C.A. might endorse a Mexican-American for one of the two at-large places other than the Mayor's.[12] It is very unlikely that C.C.A. would endorse a Mexican-American for a single-member district seat.[13] To be elected under an exclusively single-member district plan, Mexican-Americans would need to form coalitions with other groups.[14] The City's witnesses who advocated the retention of some at-large seats recognized that such a scheme would perpetuate the dependence of Mexican-American candidates upon C.C.A.;[15] that Mexican-Americans would be forced "to negotiate [with C.C.A.] just for the opportunity to run";[16] that a Mexican-American endorsed by C.C.A. would owe a debt to the slating group as well as to his constitu-

[11] IX Tr. 29–30, 46 (testimony of Mayor pro tem George Allen); IX Tr. 80–82 (testimony of Mr. Aguirre); IX Tr. 108 (testimony of Dr. Onesimo Hernandez, a member of the C.C.A. slating board); IX Tr. 155–156 (testimony of City Manager George Schrader); X Tr. 182 (testimony of plaintiffs' expert Dan Weiser); X Tr. 230–231 (testimony of School Board Member Roberto Medrano).

[12] IX Tr. 29 (testimony of Mayor pro tem Allen); IX Tr. 112 (testimony of Dr. Onesimo Hernandez). No witness suggested that C.C.A. might slate a Mexican-American for Mayor.

[13] IX Tr. 104–106 (testimony of Dr. Onesimo Hernandez). Dr. Hernandez is the only C.C.A. representative who testified.

[14] IX Tr. 112 (testimony of Dr. Hernandez); IX Tr. 126–127 (testimony of Mayor Wise); X Tr. 102–103, 113 (testimony of Mr. Weiser).

[15] IX Tr. 82 (testimony of Councilman Aguirre); IX Tr. 155–158 (testimony of City Manager Schrader).

[16] IX Tr. 88 (testimony of Councilman Aguirre).

ents;[17] and that the goal of Mexican-Americans was to achieve representation on the City Council without incurring political obligations to slating groups such as C.C.A.[18]

On February 8, 1975, at the conclusion of the remedy hearing, the district court announced in an oral opinion that it accepted the City's plan (XI Tr. 83–105). The court recognized that exclusive use of single-member districts was the "preferred" approach (XI Tr. 91) but held that retention of three at-large seats was justified for two reasons. First, the court concluded that "the 8–3 system affords a greater opportunity and potential possibility for the Mexican-American population to participate in the political system of Dallas * * *" (XI Tr. 92). Referring to plaintiffs' proposed eleven-district plan, the court stated: "[I]f we move from a total at-large system to a total single member district, then we are diluting the potential on the part of the Mexican-American to participate in the political process of Dallas" (XI Tr. 94–95). As a second justification for allowing three at-large seats, the court found a legitimate governmental interest in preserving a city-wide view on issues that affect the City as a whole. In the court's words, "such matters as bond issues, zoning, city planning, [and] parks, all * * * require a look from an overall perspective from some representation on the City Government."

[17] IX Tr. 158 (testimony of City Manager Schrader).

[18] IX Tr. 88 (testimony of Councilman Aguirre); IX Tr. 111–112 (testimony of Dr. Hernandez).

"[The 8–3 plan would] giv[e] stabilization to the city in offsetting and helping to prevent sectional interests" (XI Tr. 99, 95). Accordingly, the court held that the City's plan was constitutional (XI Tr. 87, 101).

In the course of its oral opinion of February 8, 1975, the district court ordered "that the election scheduled for April of this year will proceed and elect the City Council for this year under the City Plan of 8–3 that has been presented to this Court" (XI Tr. 86). The court retained jurisdiction "to oversee any ramifications of this over the next several months or however long a period is necessary" (*ibid.*). The court also stressed that "the City of Dallas is the Legislative body. They can change this next month or next year. * * * [T]hey can alter these districts as they see fit" (XI Tr. 89). The court entered no written order.

On February 10, 1975, two days *after* the court's oral opinion, the Dallas City Council passed Ordinance No. 14,800, which provides in part: [19]

> Section 2. As a result of the decision of the United States District Court for the Northern District of Texas in the case of *Albert L. Lipscomb, et al.* v. *Wes Wise, et al.*, CA 3–4571–E, and this Ordinance enacted pursuant thereto, only the qualified voters residing within Districts 1, 2, 3, 4, 5, 6, 7 and 8 shall be eligible to vote for a candidate for Member of Council, Place Numbers 1, 2, 3, 4, 5, 6, 7 and 8, respectively. Every qualified voter of the City shall, in addition, be eligible to vote for a candidate for Place Numbers 9, 10 and 11.

[19] This portion of Ordinance No. 14,800 is reproduced in undated form in Pet. App. A–2, Pet. Br. 4, and App. 189. A certified copy of the full dated ordinance has been lodged with the Clerk of this Court.

The District boundaries specified in this ordinance corresponded to the revised plan submitted to and approved by the district court two days earlier.

On March 25, 1975, the district court issued a written opinion in which it elaborated upon its earlier oral findings concerning both liability and remedy (App. 121–148). The court indicated that on February 8, 1975, it had "ordered that the eight/three plan as had been offered by the city, be instituted in time for the April 1975 city council elections, and that the election proceed on the scheduled date" (App. 147). Reiterating its earlier conclusion, the court stated that Mexican-Americans in Dallas "benefit to a significant extent from at-large voting" because they "have to some degree entered into the policy-making structure of the C.C.A. and other slating groups * * *" (App. 139–140). While the court noted that Mexican-Americans had in the past suffered some restrictions of access to the political process, it explicitly found that "this restriction does not amount to present dilution" (App. 138). The court also repeated its earlier observation that the City Council was free to draw different district lines after the April 1975 election (App. 144 n. 20). Again, however, the court did not issue a written order.[20]

[20] The section of the court's written opinion entitled "Order" deals only with respondents' motions for attorney's fees and costs (App. 148–152).

On April 1, 1975, the Dallas City Council election was held under the "eight/three" plan. Two blacks and nine whites were elected (App. 153–163). The black Council members were elected from the two predominantly black districts. Mr. Aguirre, the incumbent Mexican-American Council member, was slated by C.C.A. for one of the at-large places, but he was soundly defeated in the city-wide vote by a white opponent (App. 154, 159). On the basis of these results, the plaintiffs and intervenors filed motions for further relief (App. 153–156, 164–165). It does not appear that the district court ruled specifically on these motions; but on May 22, 1975, the district court entered a written judgment granting "in all respects" "the relief set forth in the Court's memorandum opinion of March 25, 1975" (App. 3). Timely notices of appeal were filed in June 1975 (*ibid.*).

During the pendency of the appeals, Texas became subject to the preclearance requirements of the Voting Rights Act of 1965. On August 6, 1975, the President signed into law the Voting Rights Act Amendments of 1975, 89 Stat. 400. And on September 18, 1975, the Attorney General and the Director of the Census certified that Texas meets the requirements of Section 4(b) of the Act, as amended, 42 U.S.C. (and Supp. V) 1973b(b). 40 Fed. Reg. 43746. As a consequence, under Section 5 of the Act, Dallas may not "enact or seek to administer" any election law different from that "in force or effect on November 1, 1972" without submitting the change for preclearance by the Attorney General or the District Court for the District of Columbia. See pp. 32–37, *infra*.

In April 1976, the voters of Dallas approved the "eight/three" plan that had been ordered into effect by the district court and then enacted as an ordinance by the City Council. When passed by the voters, the "eight/three" plan became part of the City Charter (Pet. Br. 5). Neither the ordinance nor the Charter amendment has been submitted for preclearance to the Attorney General or to the District Court for the District of Columbia.[21] The April 1977 City Council election was held under the "eight/three" plan.

On May 9, 1977, the court of appeals reversed (App. 168–177; 551 F. 2d 1043). Relying primarily on *East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636, the court of appeals held that, absent exceptional circumstances, court-ordered relief could utilize only single-member districts. The court of appeals rejected the proposition that some at-large seats on the City

[21] On October 10, 1975, Dallas submitted for preclearance a request to hold a special election in District No. 6 to fill a vacancy caused by a resignation. The City stated: "In making this submission, we are not requesting any determination as to the total system of representation of the City Council of the City of Dallas, but simply to determine whether the Department has any objection to our holding the special election to allow the individuals in District No. 6 to be represented *while the other issues are being considered at a later time*" (emphasis added). On November 14, 1975, the Attorney General stated that he had no objection to the special election to fill the vacancy in District No. 6. (The submission and no-objection letters have been lodged with the Clerk, and copies have been sent to the parties.)

On February 10, 1976, Dallas sought preclearance from the Attorney General "to hold a special election on April 3, 1976, to fill two vacancies in at-large positions on the City Council created by resignations which occurred on January 30, 1976, and February 2, 1976." The City also stated that "propositions to amend the City Charter will be presented at the election." However, the propositions specified in the submission did not relate to any ap-

Council should be retained in order to strengthen the voting power of Mexican-Americans. In the first place, said the court, "there has never been a determination that [Mexican-American access to the political process] has been constitutionally impaired" (App. 174). Secondly, the court of appeals pointed to the results of the April 1975 election and expressed skepticism that Mexican-Americans would in fact benefit from the "eight/three" plan (App. 175–176). The other justification advanced by the district court, namely, the desirability of some city-wide representation, was not addressed by the court of appeals. The court also did not address respondents' contention [22] that the City's enactment of the court-approved "eight/three" plan was ineffective because the City had not obtained the necessary preclearance under the Voting Rights Act of 1965. Finally, and without explanation, the court of appeals stated that the Mayor could be elected by city-wide vote.[23] Timely petitions for rehearing were denied (App. 178).

The court of appeals' mandate was stayed by Mr. Justice Powell on August 30, 1977 (App. 181–187).

INTRODUCTION AND SUMMARY OF ARGUMENT

Five years ago, this Court unanimously held that the at-large method of electing Texas state legislators

portionment system for electing Council members; and, in particular, the submission did not state that the "eight/three" plan would be submitted to the voters. On April 19, 1976, the Attorney General stated that he had no objection to the special elections and propositions specified in the submission. (The submission and no-objection letters have been lodged with the Clerk, and copies have been sent to the parties.)

[22] See Brief for Plaintiff-Appellants 35–38.

[23] Respondents have not cross-petitioned from this ruling. See note 26, *infra*.

from Dallas unconstitutionally diminished the voting strength of black persons in that City. *White* v. *Regester,* 412 U.S. 755, 765–767. The district court in this case applied the principles of *White* and concluded that the at-large system of electing all eleven members of the Dallas City Council resulted in similar unconstitutional dilution of black votes. Petitioners do not dispute the correctness of that ruling. The only question now presented concerns the legality of the City's reapportionment plan, which provides for the election of eight Council members from single-member districts but retains three at-large seats.

That plan was originally proposed by the City Council itself in response to an invitation from the district court. On February 8, 1975, over respondents' objections, the court accepted the City's plan and ordered it into effect for the April 1975 Council elections. Two days later, the City Council passed an ordinance embodying the terms of the district court's order, and, in April 1976, this ordinance was formally enacted as a Charter amendment by the voters of Dallas.

The appropriate standard governing judicial review of a reapportionment plan depends on whether that plan has been ordered into effect by a court or has been enacted by the voters or their duly elected representatives. Legislatively enacted plans are constrained only by constitutional bounds, *Burns* v. *Richardson,* 384 U.S. 73, 85; court-ordered plans must also comply with federal remedial requirements that greatly restrict the use of at-large elections. See, *e.g., Connor* v. *Finch,* 431 U.S. 407, 415; *East Carroll Parish School Board* v. *Marshall,* 424 U.S. 636, 639.

One additional factor comes into play when a reapportionment plan has been adopted by the voters or a legislature. That factor is the Voting Rights Act of 1965, 79 Stat. 437, as amended, 42 U.S.C. (and Supp. V) 1973 *et seq.* In areas covered by Section 4 of the Act, legislative changes in the apportionment of state or local legislative bodies cannot be implemented unless precleared under Section 5 of the Act. *Connor* v. *Waller*, 421 U.S. 656; *United States* v. *Board of Commissioners of Sheffield, Alabama*, No. 76–1662, decided March 6, 1978. Texas has been covered by Section 4 of the Act since September 18, 1975. See p. 14, *supra*.

The district court erred in ordering a reapportionment plan for the Dallas City Council that involved the retention of three at-large seats. The court failed to comply with the repeated holdings of this Court that single-member districts are to be preferred in court-ordered reapportionment plans in the absence of unusual circumstances. See, *e.g.*, *Connor* v. *Finch, supra; East Carroll Parish School Board* v. *Marshall, supra; Chapman* v. *Meier;* 420 U.S. 1, 19; *Mahan* v. *Howell,* 410 U.S. 315, 333. This principle is particularly compelling in a case like this one, where the previously existing apportionment has been found constitutionally infirm because at-large elections have diminished the impact of black voters.

No special circumstances justifying court-ordered at-large elections are present here. The district court's stated justifications for its endorsement of the "eight/three" plan are inadequate. The desire to maintain a city-wide perspective on the City Council is not a special circumstance and is, in any event, an inadequate

reason to countenance the continuing dilution of black voting strength. Retention of three at-large seats also cannot be explained in terms of its potential beneficial effect on Mexican-American voters. The district court expressly found that Mexican-Americans in Dallas have not suffered any constitutional injury, and therefore no remedy directed toward Mexican-Americans is necessary. And there is no indication that preservation of three at-large places on the City Council will in fact increase the voice of Mexican-Americans. Indeed, to the extent evidence is available, it indicates the contrary.

Finally, the district court's error in accepting the reapportionment plan proposed by the Dallas City Council and rejecting the alternative plans offered by respondents was not obviated by the subsequent enactment of the "eight/three" plan as a Charter amendment. Neither the ordinance adopted by the Council itself two days after the district court's order nor the 1976 Charter amendment adopted by the Dallas voters was submitted for preclearance under Section 5 of the Voting Rights Act. Such preclearance is required even when a legislatively enacted plan adopts the terms of an earlier court order. *Connor* v. *Waller*, 421 U.S. 656. The failure to obtain the required preclearance renders the Charter amendment ineffective, and accordingly this Court need not consider the constitutional validity of that measure.

In these circumstances, the court of appeals properly concluded that respondents were entitled to the relief they sought, *i.e.*, election of all City Council

members (except perhaps the Mayor) from single-member districts. Its judgment therefore should be affirmed.

ARGUMENT

At issue in this case is a court-ordered reapportionment plan subsequently enacted by the Dallas voters as an amendment to the City Charter. The standards for reviewing court-ordered plans and legislatively enacted plans differ. The former must conform to both constitutional requirements and the federal law of remedies. See, *e.g., Connor* v. *Finch,* 431 U.S. 407, 409, 415. The latter need satisfy only the Constitution. See, *e.g., Burns* v. *Richardson,* 384 U.S. 73. In areas covered by Section 4 of the Voting Rights Act of 1965, 79 Stat. 438, as amended, 42 U.S.C. (and Supp. V) 1973b, legislatively enacted reapportionment plans must pass an additional test. They must be precleared under Section 5 of the Act, 42 U.S.C. (Supp. V) 1973c, by submission to the Attorney General or by suit in the District Court for the District of Columbia. Plans that should be but have not yet been precleared are of no force or effect. *Connor* v. *Waller,* 421 U.S. 656.

In ordering a reapportionment plan under which some City Council members would be elected at-large, the district court departed from remedial principles established by this Court and thus deprived respondents of relief to which they were entitled. When later approved by the Dallas voters, the plan should have been submitted for preclearance under Section 5 of the Voting Rights Act. It has not been so submitted and is therefore of no effect. Respondents remain entitled to the relief they sought in the district court and, accordingly, the decision of the court of appeals should be affirmed.

I. THE DISTRICT COURT ERRED IN ORDERING A REAPPORTIONMENT PLAN UNDER WHICH THREE MEMBERS OF THE DALLAS CITY COUNCIL WOULD BE ELECTED AT-LARGE

This Court has repeatedly held that a court-ordered remedy for malapportionment must comply with both constitutional requirements and appropriate federal remedial principles. *Connor* v. *Finch, supra; East Carroll Parish School Board* v. *Marshall,* 424 U.S. 636; *Chapman* v. *Meier,* 420 U.S. 1; *Mahan* v. *Howell,* 410 U.S. 315; *Connor* v. *Williams,* 404 U.S. 549; *Connor* v. *Johnson,* 402 U.S. 690. In particular, "single-member districts are to be preferred in court-ordered legislative reapportionment plans unless the court can articulate a 'singular combination of unique factors' that justifies a different result." *Connor* v. *Finch, supra,* 431 U.S. at 415. This stringent standard applies even when a court decides to order into effect a plan originally proposed by a legislative body. *East Carroll Parish School Board* v. *Marshall, supra.*

When the district court accepted the City's plan on February 8, 1975, this case was procedurally indistinguishable from *East Carroll:* an existing apportionment system had been found unconstitutional, and, at the court's invitation, the local government had proposed a remedial plan. In these circumstances, the district court should have applied settled remedial principles and refused to order at-large elections

"[a]bsent particularly pressing features calling for multimember districts." *Chapman* v. *Meier, supra,* 420 U.S. at 19. *Chapman* was decided on January 27, 1975, and in delivering its oral opinion the district court specifically referred to this Court's ruling several days before (XI Tr. 84–85; see also App. 136). The district court also expressed awareness of the general preference for single-member districts (XI Tr. 91; see also App. 137, 146, 147). The court nevertheless approved the retention of three at-large seats on the Dallas City Council because it reviewed the reapportionment plan proposed by the Council as if it had been a legislatively enacted plan. See XI Tr. 84–85, 87, 89, 101; App. 136, 146–147. This was error.

The fact that a given plan has been designed by a legislative body is not dispositive when the effectiveness of the plan depends upon a court order. *East Carroll Parish School Board* v. *Marshall, supra*;[24] *Wallace* v. *House,* 538 F. 2d 1138 (C.A. 5) (on remand), certiorari denied, 431 U.S. 965. The plan in this case had not been formally enacted by the Council when it was submitted to the district court; moreover, under the Texas Constitution (Art. XI, § 5), the Council does not have the authority to alter its own apportionment, even if it wishes to do so. Under *East Carroll*, the district court should have accepted the

[24] In fairness to the district court, it should be noted that *East Carroll* was not decided until March 8, 1976. This Court there explicitly held for the first time that the established federal remedial principles governing court-ordered plans apply to such plans proposed but not enacted by a legislative body.

City's plan and ordered it into effect only if at-large election of three Council members was justified by a "singular combination of unique factors" such as that presented in *Mahan* v. *Howell, supra,* 410 U.S. at 330–333 (district court, operating under severe time pressure, combined three single-member districts into one multimember district in order to alleviate malapportionment caused by inaccurate census data on actual residences of Naval personnel "home-ported" at Norfolk, Virginia).

No such special circumstances are involved in this case. The considerations that motivated the district court to endorse the retention of at-large elections in Dallas are not sufficiently compelling to outweigh the continued dilution of black voting strength that the City's plan would entail. One of these considerations, the desirability of maintaining a city-wide viewpoint on the Council, simply restates a common argument in favor of at-large elections. It does not qualify as a "unique factor" justifying departure from the preferred single-member district system.[25] If court-ordered reapportionment plans could use at-large elections whenever they might serve a reasonable purpose, little would be left of this Court's insistence that single-member districts be used in the absence of "unusual circumstances" (*East Carroll Parish School Board* v. *Marshall, supra,* 424 U.S. at 639). And, in

[25] Similarly, this Court's requirement of a "singular combination of unique factors" will not be satisfied merely by a showing that multimember districts are supported by a state's historical practices. See *Connor* v. *Finch, supra,* 431 U.S. at 415.

any event, representation of a city-wide perspective on the Council is not more important than elimination of unconstitutional racial dilution.[26]

The other factor stressed by the district court is the need to prevent improper diminution of the voting strength of Mexican-Americans in Dallas. Protection of identifiable minorities' access to the political process is a goal that governments may legitimately pursue in drafting reapportionment plans. See *United Jewish Organizations* v. *Carey*, 430 U.S. 144, 167–168 (plurality opinion). But, on the basis of this record, the court of appeals correctly concluded that such an objective cannot justify retention of three at-large seats on the Dallas City Council.

First, the district court found that Mexican-Americans in Dallas had not suffered unconstitutional dilution (App. 138). At-large seats are thus not required in order to remedy a constitutional violation (App. 174–175). Nor would the constitutional rights of Mexican-Americans be endangered by the election of all Council members from fairly drawn single-member districts. *United Jewish Organizations* v.

[26] One of the alternative plans that respondents proposed to the district court provided for at-large election of the Mayor. The court of appeals held that this was appropriate, and respondents have not cross-petitioned. Accordingly, this case does not present the question whether reservation of one at-large seat for the Mayor may be justified on the grounds that that official should represent all of the City's voters and that the dilutive effect of having one of eleven Council members elected at-large is *de minimis*. See *Wallace* v. *House*, 515 F. 2d 619 (C.A. 5), vacated, 425 U.S. 947, on remand, 538 F. 2d 1138 (C.A. 5), certiorari denied, 431 U.S. 965.

Carey, supra, 430 U.S. at 166–168 (plurality opinion).[27]

Second, although the district court determined that Mexican-American voters would benefit from the retention of three at-large seats, that conclusion is not sufficiently supported by the court's findings to justify departure from the normal remedial principle. The district court relied on the following features of the local political situation: Mexican-Americans comprise only 8 percent of Dallas's population and are dispersed throughout the City; without doubling the size of the City Council, it is impossible to construct a single-member district in which Mexican-Americans would form a majority; under the exclusively at-large system that prevailed in Dallas before 1975, two Mexican-Americans were endorsed by the C.C.A. slating group and elected to the Council, one in 1971 and one in 1973; no Mexican-American has been elected to the Council without C.C.A. endorsement, and C.C.A. probably will not endorse a Mexican-American in a single-member district.

From this evidence, the district court concluded that "at-large voting * * * allow[s] greater participation in the political processes * * * for Mexican-American voters," because they "have to some degree entered into the policy-making structure of the C.C.A. and other slating groups * * *" (App. 140). But the

[27] There is no contention in this case that any proposed plan is gerrymandered against Mexican-Americans. Such gerrymandering would be difficult to accomplish because the Mexican-American population of Dallas is scattered throughout the City.

district court also found (App. 134; VIII Tr. 6–9) that the predilections of these slating groups and their prominent role in Council elections had contributed to the unconstitutional dilution of black voting strength. The fact that C.C.A. has in the past endorsed two Mexican-American candidates does not counsel approval of a reapportionment plan that would perpetuate minority dependence on the largesse of C.C.A. or some other slating group.[28] As the district court itself recognized (App. 134), "[m]eaningful participation in the political process must not be a function of grace, but rather is a matter of right." *Graves* v. *Barnes,* 343 F. Supp. 704, 726 (W.D. Tex.), affirmed in relevant part *sub nom. White* v. *Regester,* 412 U.S. 755.

Moreover, events in the wake of the district court's order have belied the court's assessment of the advantages that continued at-large voting would confer on Mexican-Americans. When eleven at-large seats were available, it was not surprising that C.C.A. eventually decided to endorse a Mexican-American, and that some white voters, casting eleven votes, gave one to a Chicano selected and endorsed by the domi-

[28] Under the single-member plans that respondents presented to the district court, District No. 2 would be either 22% or 28% Mexican-American and would not have a majority racial group (see notes 7 and 8, *supra*). The prospects for election of a Mexican-American in this district would seem greater than in the City as a whole, where Mexican-Americans comprise only 8% of the population. Mexican-Americans in District No. 2 would constitute a swing vote and could form coalitions with either whites or blacks. C.C.A., however, appears unwilling to endorse a Mexican-American in a single-member district election.

nant slating group. The situation is markedly different under the "eight/three" plan, when only three Council members are elected at-large and one of them is the Mayor. To benefit from this arrangement, a Mexican-American candidate must be endorsed by C.C.A. for one of the two at-large seats other than the Mayor's [29] and then must receive a city-wide majority vote in the face of racial bloc voting. In the April 1975 election, the incumbent Mexican-American Council member was endorsed by C.C.A. for an at-large seat, but he was soundly defeated by a white opponent (App. 154, 159). This result prompted the Mexican-American intervenors in this litigation to move for further relief in the district court (App. 164–165) and to state categorically that "At Large voting does not offer features which allow greater participation in the political process within Dallas for Mexican-American voters, but in fact dilutes the vote of the Mexican-American citizen and makes it impossible for a Mexican-American to participate meaningful in the election process" (*ibid.*).

The inadequacy of the district court's justifications for the retention of at-large voting and petitioners' failure to identify any compelling governmental interest in support of the "eight/three" plan are particularly decisive in this case where the need for reapportionment arose precisely because the district court found that black voting strength had been unconstitutionally diluted by at-large elections. The

[29] C.C.A. endorsement of a minority candidate for Mayor does not appear to be a realistic possibility. See note 12, *supra.*

numerous cases in which this Court has expressed a preference for the use of single-member districts in court-ordered plans all involved apportionment schemes that were held unconstitutional because they departed from the one-person, one-vote rule.[30] The Court's admonition that court-ordered remedial plans should use only single-member districts reflected concern about the *potential* undesirable consequences of multimember districting. In particular, in *Connor* v. *Finch, supra,* 431 U.S. at 415, the Court voiced the fear that multimember districts might "tend to submerge electoral minorities and overrepresent electoral majorities * * *." That fear was realized in this case. In fashioning its remedy, the district court should have avoided at-large voting not only because this Court has instructed it to do so, but also because at-large voting was the source of the very violation the district court was seeking to eliminate. As this Court has stated in a different context, "the nature of the * * * remedy is to be determined by the nature and scope of the constitutional violation." *Milliken* v. *Bradley,* 433 U.S. 267, 280.

Upon finding that the use of at-large elections had produced unconstitutional racial discrimination, the district court's duty was "to render a decree which [would] so far as possible eliminate the discriminatory effects of the past as well as bar like discrimina-

[30] The exclusively at-large election system prevailing in Dallas before 1975 was not challenged on the ground that it violated the one-person, one-vote principle; indeed, it is difficult to see how a purely at-large apportionment could be attacked on that basis.

tion in the future." *Louisiana* v. *United States,* 380 U.S. 145, 154. This duty is not fulfilled by a decree under which three Council members are elected at-large. The same factors that were found at the liability stage to minimize black electoral participation (*i.e.,* racial bloc voting, the history of *de jure* discrimination, and the power of white-dominated slating groups) will presumably operate to dilute the voting strength of blacks for three at-large seats.[31] The district court's decree, therefore, did not adequately ensure that black voters will have an equal opportunity with white voters "to participate in the political processes and to elect legislators of their choice" (*White* v. *Regester,* 412 U.S. 755, 766).

One final point remains to be made about the district court's order. It applied only to the April 1975 City Council election. When the court accepted the City's proposed reapportionment plan, it explicitly ordered the plan into effect for "the election scheduled for April [1975] * * *" (XI Tr. 86). The directive was repeated several weeks later in the court's written opinion (App. 147). On neither occasion did the court indicate that its order would govern any election other than the one that was about to occur. The "eight/three" plan was devised, submitted, and approved under substantial time pressure, and was intended by the court as a temporary measure to guar-

[31] When a district court must formulate a remedy for racial discrimination, the force of proof presented at the liability stage "does not dissipate at the remedial stage of the trial." *International Brotherhood of Teamsters* v. *United States,* 431 U.S. 324, 361–362.

antee the constitutionality of the imminent Council election. This conclusion is reinforced by the court's repeated references to the possibility that Dallas might wish to change the plan in the near future (XI Tr. 89, 101). It is also confirmed by the City's belief that the court's order was of finite duration and that a legislative enactment was necessary to perpetuate the "eight/three" scheme. This belief is evidenced by the Council's enactment of the plan as an ordinance two days after the court's oral approval, and by the submission of the plan to a referendum of the Dallas voters in April 1976, so that it could be approved as a Charter amendment pursuant to state law.

Moreover, even if the district court may have intended its order to operate beyond April 1975,[32] the order by its terms refers only to the election conducted at that time. Under the specificity requirements of Rule 65(d), Fed. R. Civ. P., a district court must frame its orders so that the parties and appellate courts "will know what the court intends to require and what it means to forbid." *International Long-*

[32] The district court stated that it would retain jurisdiction "to oversee any ramifications of this over the next several months or however long a period is necessary" (XI Tr. 86). Also, in granting the City's request to modify certain Charter requirements for signatures on nominating petitions, the court provided that "[t]his modification [will be effective] for the April 1975 election only" (App. 147–148). This latter comment may be read either as support for the proposition that no part of the district court's order was intended to apply beyond April 1975 or as an indication that, with the exception of the modification of signature rules, the court-ordered reapportionment plan would govern indefinitely (since the court-ordered plan could be operated without this modification).

shoremen's Assn. v. *Philadelphia Marine Trade Assn.*, 389 U.S. 64, 76. See *Schmidt* v. *Lessard*, 414 U.S. 473.[33] An important element of Rule 65(d) is that the intended duration of an injunction must be prescribed by the district court and not left to speculation. *Granny Goose Foods, Inc.* v. *Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda County*, 415 U.S. 423, 444. The district court's order here seemingly applies only to the April 1975 election, and should be so construed under Rule 65(d).

The fact that the "eight/three" plan, as approved and ordered into effect by the district court, controlled only the April 1975 election does not render respondents' challenge to the district court's decision moot. In their complaint, respondents sought a permanent injunction barring Council elections until "the City of Dallas is redistricted into individual member voting districts" (App. 11). The district court denied that relief, and the question whether the denial was error is not moot—unless, in the interim, Dallas has adopted a valid reapportionment plan for its City Council. As the remaining portion of this brief demonstrates, it has not.

[33] Rule 65(d) is designed to serve two functions—to give fair notice to parties who may be subjected to contempt proceedings for alleged violations of an injunction, and to ensure informed appellate review. *Schmidt* v. *Lessard*, *supra*, 414 U.S. at 476–477. The second function is directly relevant here. If the duration of a district court's order were determined by inferences and guesswork, rather than by express language, it would be "impossible for an appellate tribunal to know precisely what it is reviewing." *Id.* at 477.

II. THE 1976 CHARTER AMENDMENT IS INEFFECTIVE BECAUSE IT HAS NOT BEEN PRECLEARED UNDER SECTION 5 OF THE VOTING RIGHTS ACT

Although the lower courts did not rule on the consequences of the failure to submit the 1976 Charter amendment for preclearance under Section 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U.S.C. (Supp. V) 1973c, that issue was raised by respondents before the court of appeals[34] and is properly before this Court as a basis for affirmance. See, *e.g., United States* v. *New York Telephone Co.,* No. 76–835, decided December 7, 1977, slip op. 6 n.8; *Massachusetts Mutual Life Ins. Co.* v. *Ludwig,* 426 U.S. 479; *Langnes* v. *Green,* 282 U.S. 531, 535–539. The issue should be resolved here rather than remanded to the lower courts. See *Perkins* v. *Matthews,* 400 U.S. 379, 386–387. The facts necessary for an appropriate disposition are in the record, and the governing legal principles are well-established.

Since September 18, 1975, Texas has been covered by Section 4 of the Voting Rights Act, 79 Stat. 438, as amended, 42 U.S.C. (and Supp. V) 1973b.[35] See *Bris-*

[34] See p. 16, *supra.* Plaintiffs could not have raised the Section 5 issue before the district court because Section 5 did not apply to Texas until the case was pending on appeal. See p. 14, *supra.*

[35] As originally enacted in 1965, Section 4 applied to any state or political subdivision for which (1) the Attorney General has determined that on November 1, 1964, it maintained a "test or device," and (2) the Director of the Census has determined that less than 50% of its voting-age residents were registered for, or voted in, the presidential election of November 1964. The phrase "test or device" was defined to include the following requirements for registration or voting: literacy and educational achievement tests; good moral character requirements; and voucher systems. See 42 U.S.C. 1973b(c); *South Carolina* v. *Katzenbach,* 383 U.S. 301, 317–318. When the Act was reenacted, as amended, in 1970, the coverage formula of Section 4 was expanded to include November 1968 voting and registration results; the definition of "test or device" in Section 4(c) was retained. 84 Stat. 315.

In Texas, less than 50% of the voting-age population voted in the presidential elections in 1964 and 1968. Until 1975, however, Texas was not covered by Section 4 because it did not use a "test or device" for registration or voting as defined in Section 4(c). See H.R. Rep. No. 94–196, 94th Cong., 1st Sess. 17 (1975); S. Rep. No. 94–295, 94th Cong., 1st Sess. 25 (1975). When the Act was reenacted, as amended, in 1975, the definition of "test or device" in Section 4(c) was expanded to include the use of English language registration or voting materials in any state or political subdivision in which the Director of the Census has determined that more than 5% of the voting-age citizens are members of a single language minority. 89 Stat. 400–402. The House and Senate Committees which drafted this legislation stated that this change was principally designed to bring Texas within the preclearance requirements of Section 5 because of that State's long history of voting discrimination against blacks and Mexican-Americans. H.R. Rep. No. 94–196, *supra,* at 17–22; S. Rep. No. 94–295, *supra,* at 25–30. Of particular concern to Congress were at-large election systems in Texas which diluted the voting strength of blacks and Mexican-Americans. H.R. Rep. No. 94–196, *supra,* at 19–20; S. Rep. No. 94–295, *supra,* at 27–28. See also Hearings on S. 407, S. 903, S. 1297, S. 1409, and S. 1443 (Extension of the Voting Rights Act of 1965) before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 94th Cong., 1st Sess. 461–462 (statement of Dr. Charles L. Cotrell); *id.* at 234 (statement of Representative Barbara Jordan) (1975).

coe v. *Bell,* 432 U.S. 404. Accordingly, under Section 5 of the Act, the City of Dallas cannot "enact or seek to administer" a reapportionment plan "different from that in force or effect on November 1, 1972" without first obtaining preclearance from the Attorney General or the District Court for the District of Columbia. See *United*

States v. *Board of Commissioners of Sheffield, Alabama,* No. 76–1662, decided March 6, 1978; *Georgia* v. *United States,* 411 U.S. 526. Until such preclearance is obtained, the 1976 Charter amendment has no force or effect.[36] *Connor* v. *Waller,* 421 U.S. 656; *Morris* v. *Gressette,* 432 U.S. 491, 497 n. 8. This is true notwithstanding the fact that the amendment adopts the "eight/three" plan approved by the district court.

Connor v. *Waller, supra,* holds that in a state covered by Section 4 of the Act, a legislatively-enacted reapportionment plan is subject to the preclearance requirements of Section 5 even if enacted during reapportionment litigation. The facts of *Waller* are almost identical to those presented here. In 1975, the Mississippi legislature reapportioned both of its houses through the enactment of two state laws. With respect to 81 of Mississippi's 82 counties, these laws adopted the exact details of federal district court reapportionment orders;[37] in the remaining county the laws adopted a district court order with a slight modification.[38] A three-judge district court then sustained the constitutionality of the legislation, relying heavily on the fact that the new laws embodied earlier court-ordered plans. *Connor* v. *Waller,* 396 F. Supp. 1308 (S.D. Miss.). This Court summarily reversed, holding that the district court should not have reached the constitutional challenges to the Mississippi Acts because those Acts were not and would not be "effective as laws until and unless cleared pursuant to § 5 [of the Voting Rights Act of 1965]." *Connor* v. *Waller,* 421 U.S. 656. There is no suggestion in the Court's opinion that the reversal was based on the difference in one minor detail between the legislative enactments and the court orders upon which they were modeled.

Even if the question were an open one, there are strong reasons for concluding that the inclusive language of Section 5 covers legislative reapportionments modeled upon pre-existing court orders. A legislative enactment such as Dallas's 1976 Charter amendment does more than simply "incorporate" a federal court's order. A court can modify its order or grant additional relief upon a proper factual show-

[36] Because under the Texas Constitution (Art. XI, § 5) voter approval is necessary to effectuate a change in Dallas's election laws, the discussion in the text has been limited to the April 1976 Charter amendment. Nevertheless, the preclearance requirements of Section 5 would also apply to the February 10, 1975, ordinance. Although that ordinance was passed before Texas became subject to Section 5, the preclearance requirements cover any attempt to "enact *or seek to administer*" any election law different from that "in force or effect *on November 1, 1972.*" 42 U.S.C. (Supp. V) 1973c (emphasis added). See *Perkins* v. *Matthews,* 400 U.S. 379, 394–395.

[37] The 1975 Mississippi legislation provided that 79 of the state's counties would be reapportioned according to the precise terms of the 1971 district court order in *Connor* v. *Johnson,* 330 F. Supp. 506 (S.D. Miss.), which governed the 1971 legislative elections. See *Connor* v. *Waller,* 396 F. Supp. 1308, 1309–1310, 1316–1317, 1332. In two other counties, the 1975 legislation adopted the terms of federal district court reapportionment orders relating specifically to those counties. See *id.* at 1317.

[38] The 1975 Mississippi legislation adopted a federal district court reapportionment order relating to Jackson County but combined a small adjacent county (George) for the purpose of electing representatives at-large. See *id.* at 1318–1319.

ing.[39] In this case, for example, respondents could argue that the results of elections held since the order was issued undercut the court's finding that Mexican-Americans would benefit from the City's proposed plan. But if the plan is enacted as legislation, modification is substantially more difficult; respondents would bear the burden of proving that the legislation is unconstitutional. Because such legislation adopting a court-ordered plan has consequences broader than the court order itself, the legislation should be subject to preclearance under Section 5. Only existing and binding court-ordered reapportionment plans should be exempt from the inclusive language of Section 5. *Connor* v. *Johnson,* 402 U.S. 690; *Morris* v. *Gressette, supra,* 432 U.S. at 497 n. 8; *East Carroll Parish School Board* v. *Marshall, supra,* 424 U.S. at 638-639, n. 6.

In sum, the Charter amendment is not effective as law because it has not been submitted for preclearance under Section 5.[40] The amendment therefore cannot provide authority for the conduct of Dallas City Council elections. Nor are those elections any longer governed by the district court's 1975 order (see pp. 29–31, *supra*). Regardless of the status of that order, however, the court of appeals correctly determined that the district court's decision improperly departed from remedial principles established by this Court and thereby deprived respondents of relief to which they were entitled. Single-member districts remain the preferred mechanism for court-ordered reapportionment, and petitioners have not identified any valid reason why that preference should not be followed in this case.

[39] See, *e.g, Pasadena City Bd. of Educ.* v. *Spangler*, 427 U.S. 424, 437–438; *System Federation* v. *Wright*, 364 U.S. 642, 647–648; *United States* v. *Swift & Co.*, 286 U.S. 106.

[40] If the Charter amendment were submitted for preclearance, it would be evaluated according to the standards announced in *Beer* v. *United States*, 425 U.S. 130. Because the amendment has not yet been subjected to the preclearance procedure, it is unnecessary now to determine whether the Dallas provision satisfies constitutional requirements under the Fourteenth and Fifteenth Amendments.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.
DREW S. DAYS III,
Assistant Attorney General.
PETER BUSCEMI,
Assistant to the Solicitor General.
BRIAN K. LANDSBERG,
ROBERT J. REINSTEIN,
Attorneys.

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